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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12
13 NEXTDOOR.COM, INC., a Delaware
corporation,

14 Plaintiff,

15 v.

16 RAJ ABHYANKER, an individual,

17 Defendant.

18
19 RAJ ABHYANKER, an individual,

20 Counterclaimant,

21 v.

22 NEXTDOOR.COM, INC., a Delaware
corporation; PRAKASH JANAKIRAMAN, an
23 individual; BENCHMARK CAPITAL
PARTNERS, L.P., a Delaware limited
24 partnership; BENCHMARK CAPITAL
MANAGEMENT CO. LLC, a Delaware limited
25 liability company; SANDEEP SOOD, an
individual; MONSOON ENTERPRISES, INC., a
26 California corporation, and DOES 1-50,
inclusive,

27 Counterdefendants.
28

Case No. 3:12-cv-05667-EMC

**NEXTDOOR.COM, INC.'S NOTICE OF
MOTION AND MOTION FOR RULE 11
SANCTIONS**

Date: January 16, 2014

Time: 1:30 p.m.

Judge: Honorable Edward M. Chen

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NOTICE OF MOTION AND MOTION**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on January 16, 2014 at 1:30 p.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Edward M. Chen, 450 Golden Gate Avenue, San Francisco, California, Plaintiff and Counterdefendant Nextdoor.com, Inc. will and hereby does move for an order granting sanctions under Federal Rule of Civil Procedure 11. This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the accompanying declaration of Jennifer L. Kelly in support thereof, the pleadings and other papers on file in this action, and any other oral or written submissions as the Court may entertain.

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

Defendant and Counterclaimant Raj Abhyanker (“Abhyanker”) has spent the last two years filing complaints, trademark oppositions, and counterclaims in an attempt to manufacture some set of facts he can use to hold Nextdoor.com, its founders, and its investors liable for something. In furtherance of this effort, Abhyanker’s pleadings and other filings have been riddled with allegations that are at best wild speculation, and at worst, maliciously false. Abhyanker’s most recent iterations of this conduct are his proposed Second Amended Answer and Counterclaims and Amended Disclosure of Trade Secrets, which contain allegations he has zero basis for asserting. Despite repeated requests that Abhyanker withdraw them, he has refused. His effort to prolong frivolous claims prompts this Motion to hold him accountable.

Abhyanker’s filings contain baseless factual and legal assertions designed to harass Nextdoor.com and its founders and delay vindication of their rights. While Abhyanker’s misstatements and mischaracterizations are legion, this Motion focuses only on the most central and egregious examples: (1) Abhyanker’s claim that Nextdoor.com has induced its customers to infringe Abhyanker’s improbably named “Geospatially Constrained Gastronomic Bidding” patent; (2) Abhyanker’s assertion that Nextdoor.com misappropriated Abhyanker’s user interface source code; and (3) Abhyanker’s continuing false assertion that Counterdefendant Prakash Janakiraman was an entrepreneur-in-residence (“EIR”) at Counterdefendant Benchmark Capital, and that Janakiraman and Nextdoor.com co-founder Nirav Tolia rifled through Benchmark’s files to steal Abhyanker’s trade secrets.

None of these allegations has any basis in fact or law, and Abhyanker’s pleadings provide no basis on which he could have believed them to be true, much less objectively. Abhyanker and his counsel either intentionally made false allegations, or made them without conducting the required pre-filing inquiry. In either case, sanctions are appropriate. Federal Rule of Civil Procedure 11 provides for the imposition of sanctions where papers are submitted to the Court that are legally unreasonable, without factual foundation, or brought for an improper purpose. Here, Abhyanker’s allegations fail on each and every level. He and his counsel should be

1 sanctioned, and Nextdoor.com granted its attorneys' fees for having to respond to these baseless
2 allegations.

3 **FACTUAL BACKGROUND**

4 **A. Abhyanker's Failed Fatdoor Social Network**

5 Wading through the contradictory allegations of Abhyanker's various complaints,
6 oppositions, and counterclaims over the last two years of litigation, Abhyanker describes his
7 effort to develop anywhere from one to three websites in 2006. In the latest version of his story,
8 Abhyanker contends he developed the concept for three separate online services in 2006—
9 LegalForce, Nextdoor, and Fatdoor. Dkt. 115 Ex. A ("SACC") ¶¶ 100, 109.¹ The first,
10 LegalForce, allegedly was to be an online network for inventors. *Id.* ¶ 100. Abhyanker claims he
11 incorporated the LegalForce, Inc. entity in 2006 to pursue this concept, and, based on historic
12 versions of the www.legalforce.com website from www.archive.org, it appears that LegalForce
13 publicly launched in late 2006 or early 2007. Declaration of Jennifer Kelly in Support of
14 Nextdoor.com's Motion for Rule 11 Sanctions ("Kelly Decl.") ¶ 2; Exs. 1-2. According to
15 Abhyanker, LegalForce was a marketplace where intellectual property rights holders could sell or
16 license their IP rights, primarily patents. *Id.* (including LegalForce "About Us" page describing
17 the service and a listing of available patents to purchase). Abhyanker has alleged in both his
18 SACC and Amended Disclosure of Trade Secrets that the source code for this LegalForce website
19 was created for him by Counterdefendant Sandeep Sood. *See* SACC ¶ 115; Dkt. 116 ("Amended
20 TS Disclosure") at 3. Oddly, Abhyanker nonetheless maintains he has never been provided a
21 copy of this code. *See* Amended TS Disclosure at 3.

22 Abhyanker has implausibly claimed that his concept of neighborhood social website, to be
23 called Nextdoor, was a "spin off" of this patent marketplace. *See* Dkt. 59 (First Amended
24 Counterclaims ("FACC")) ¶ 109. But as Abhyanker describes it, Nextdoor was planned to be far
25 afield from LegalForce. According to Abhyanker, Nextdoor was intended to be a private social
26 network for neighbors to connect and share information (like Facebook for neighbors)—not a

27 ¹ As discussed below, Abhyanker recently filed an updated proposed SACC. *See* Dkt. 121, Ex.
28 A. The pertinent claims and allegations for this Motion were not changed by that updated
version. Accordingly, Nextdoor.com generally refers to the original proposed SACC throughout.

1 means for neighbors to purchase each others' animal trap, dental strip, or man-made island
2 patents. SACC ¶ 100; Kelly Decl. Ex. 2 (showing available patents for purchase on archived
3 version of LegalForce). Regardless, Abhyanker has been clear in the sundry formulations of his
4 allegations that his Nextdoor concept was never implemented, and that no social network was
5 ever launched by him under that name. *See, e.g.*, SACC ¶ 112.

6 According to Abhyanker, there was also a third social network— which he previously
7 claimed included his Nextdoor concept (*see* Dkt. 64 Ex. 3 (First Amended Complaint in the State
8 Court Action or “FAC”) ¶ 3), but now alleges was separate and distinct from his Nextdoor
9 concept—Fatdoor. He characterizes Fatdoor as “a Wikipedia-like public database of neighbor
10 profiles that could be edited and enhanced to provide a ‘search’ and ‘discover’ functionality.”
11 SACC ¶ 109. Abhyanker alleges that he put his LegalForce and Nextdoor concepts on hold to
12 pursue Fatdoor. *Id.* ¶ 112. Abhyanker now staunchly maintains that Nextdoor and Fatdoor were
13 in fact different concepts, contained in different companies. He asserts that while the name
14 Nextdoor was considered for Fatdoor, it was “decided not to pursue that name because of mixed
15 ownership of Nextdoor and LegalForce, and because the name was not available.” *Id.*
16 Abhyanker alleges that “an entirely new code base was built” for Fatdoor by Chandu Thota,
17 separate from the LegalForce code developed by Counterdefendant Sood. *Id.* at 116.²

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19
20
21 ² As explained in more depth in Nextdoor.com’s previous Motion to Dismiss Abhyanker’s First
22 Amended Counterclaim (Dkt. 63), Abhyanker’s allegation that Nextdoor and Fatdoor were
23 distinct concepts is flatly contradicted by Abhyanker’s previous State Court Action against
24 Nextdoor.com. In that action, Abhyanker admitted that his only relevant previous venture was
25 Fatdoor. He explained then that Nextdoor and Fatdoor were one and the same concept, and that
26 the name Fatdoor ultimately was used for that business because the Nextdoor.com domain name
27 was not available. *See, e.g.*, FAC ¶¶ 3, 21, 84-85, 94. Abhyanker conceded in that action that the
28 relevant Fatdoor IP, which purportedly encompassed the Nextdoor concept and “trade secrets”
asserted in that action, had in fact been acquired by Google from a Fatdoor successor. *See* Dkt.
64 Ex. 2 (“Complaint”) ¶ 5; FAC ¶ 23 (“[t]he entire basis for Nextdoor.com, Inc.’s business rests
on these stolen and misappropriated materials *now owned by Google, Inc.* through its acquisition
of the Nextdoor/Fatdoor patent portfolio”); *see also* FAC ¶ 169 (“Google, Inc. now owns the
rights to the original technology of the Nextdoor/Fatdoor concept”). Of course, the fact that
Fatdoor owned the Nextdoor IP, and that Google purchased Fatdoor, meant that Abhyanker had
no standing to make any claim. His revised allegations in this counterclaim followed demurrer
and dismissal of his state court claims.

B. Fatdoor's Termination of Abhyanker and Abandonment of FATDOOR

Regardless of its name, neither the Fatdoor business, nor Abhyanker's tenure with it, were long lived. Again by his own admission, Abhyanker was terminated by the Fatdoor board of directors in July 2007. SACC ¶ 127. Thereafter, Fatdoor abandoned the business model of a neighborhood social networking website and transitioned the company into a local website for mothers to plan events, changing its name to Center'd. *Id.* ¶ 130. That business then transitioned again into the local deal space and changed its name to DealMap. FAC ¶ 111. Finally, in August 2011, Fatdoor's former IP was acquired by Google. *Id.*

C. Nextdoor.com and Prakash Janakiraman

In December 2007, after Fatdoor had already abandoned the neighborhood social networking space, fired Abhyanker, and changed its name, the company that would eventually become Nextdoor.com (referred to here as the "Company" or "Nextdoor.com") was founded as SPN, Inc. SACC ¶ 99. Two of the founders of that entity were Nirav Tolia ("Tolia") and Counterdefendant Prakash Janakiraman ("Janakiraman"). In January, 2008, SPN, Inc. changed its name to Round Two, Inc. *Id.* After nearly two years of work, the Company launched an online almanac of professional and college athletes at www.fanbase.com. *See id.* In conjunction with this launch, the Company changed its name to Fanbase, Inc. *Id.* Over the next year, Fanbase, while achieving some success, failed to get the traction that was hoped for, and the company decided to change direction.

Fanbase began considering new business concepts. In the spring of 2010, the Company decided on an online neighborhood social networking concept. Dkt. 1 ¶ 14. In January 2011, the Company acquired the domain name www.nextdoor.com (*Id.* ¶ 16) and the Company changed its name to Nextdoor.com, Inc. a few months later. SACC ¶ 150. On February 8, 2011, Nextdoor.com applied for a federal registration for the "NEXTDOOR" trademark for local social networking. *Id.* ¶ 175. On October 26, 2011, Nextdoor.com publicly launched its online neighborhood social networking service at www.nextdoor.com. *Id.* ¶ 151. That service is a growing success.

1 **D. Abhyanker's Bad Faith Litigation Campaign Against Nextdoor.com**

2 Having failed in his efforts to launch a neighborhood website six years ago, Abhyanker
3 has decided to seek a piece of Nextdoor.com's success through serial litigation. Abhyanker is a
4 lawyer himself who has been using his own law firm to represent him. Kelly Decl. Ex. 3. He
5 took his opening shot in Santa Clara Superior Court less than a month after Nextdoor.com's
6 highly publicized, successful launch (the "State Court Action"). On November 10, 2011,
7 Abhyanker filed his initial Complaint in the State Court Action, naming Nextdoor.com and
8 several of its founders and investors, including Nirav Tolia and Benchmark Capital. Shortly
9 thereafter, he filed a First Amended Complaint. Abhyanker's allegations in that action were
10 based on a number of outlandish theories, including a prejudice against Arizonans in favor of
11 Texans within Nextdoor.com's investor Benchmark (FAC ¶¶ 142-43), a bias in favor of "hunters"
12 at Benchmark (*id.* ¶ 144), a "culture of communism" purportedly leading to the stealing of ideas
13 within Benchmark (*id.* ¶ 145), and a prejudice against married fathers with children, like
14 Abhyanker (*id.* ¶¶ 147-48). These oddities aside, the State Court Action centered on the same
15 factual allegations at play here—allegations that because Nextdoor.com settled on the same name
16 Abhyanker had once considered but never purchased, it must have, somehow, misappropriated
17 trade secrets relating to its business concept, name and technology.

18 Based on Abhyanker's concessions in the State Court Action that all of the relevant IP
19 asserted by Abhyanker had been owned by Fatdoor, Inc. and eventually acquired by Google,
20 Inc.—not Abhyanker—Nextdoor.com, Tolia and Benchmark demurred in the State Court Action
21 based on a lack of standing. Facing those demurrers, Abhyanker went shopping for a new forum.

22 On January 20, 2012, Abhyanker filed a Notice of Opposition to Nextdoor.com's
23 application to register the NEXTDOOR mark with the Trademark Trial and Appeal Board
24 ("TTAB"), alleging that the NEXTDOOR mark infringed Abhyanker's supposed rights in that
25 same mark. Dkt. 64 Ex. 4 ("First Opposition"). Then, on February 9, 2012, Abhyanker filed a
26 separate second notice of opposition to Nextdoor.com's application, this time claiming that it was
27 invalid due to the existence of his trademark application for the phrase FATDOOR GET TO
28 KNOW YOUR NEIGHBORS—an application Abhyanker had filed only one day prior to

1 submitting this second opposition. *Id.* Ex. 6 (“Second Opposition”).³ With this alternate
 2 litigation at the TTAB in place, and facing a meritorious demurrer, Abhyanker abruptly dismissed
 3 the State Court Action on February 7, 2012 before the court could rule. *Id.* Ex. 5.

4 **E. The Present Proceedings**

5 On November 5, 2012, Nextdoor.com instituted the present action seeking to vindicate
 6 rights that could not be decided by the TTAB, and put an end to Abhyanker’s harassment. *See*
 7 Dkt. 1. Nextdoor.com’s DJ Complaint both seeks a declaration that it is lawfully using the
 8 NEXTDOOR mark and asserts affirmative claims against Abhyanker for Cyberpiracy and
 9 violation of the Lanham Act. *See* Dkt. 1 (the “DJ Complaint”). Nextdoor.com’s affirmative
 10 claims seek to stop Abhyanker’s use of the name “Nextdoor,” as well as his use of the domain
 11 name www.nextdoor.cm to pretend to be Nextdoor.com, both of which activities commenced
 12 shortly *after* Nextdoor.com’s public launch. Nextdoor.com alleges that Abhyanker took these
 13 steps for the purpose of confusing the public and attempting to leverage a claim against
 14 Nextdoor.com. *Id.*

15 Abhyanker responded to Nextdoor.com’s DJ Complaint with a Counterclaim, which
 16 partially recycled and partially contradicted his previously abandoned claims in the State Court
 17 Action (as explained above). Dkt. 16. But despite manipulating his allegations in an effort to
 18 prolong his claims, Abhyanker again failed to allege facts plausibly supporting either of his two
 19 causes of action. *Id.* Accordingly, Counterdefendants filed motions to dismiss those claims. In
 20 the face of those motions Abhyanker tried another dodge, filing a First Amended Counterclaim
 21 that narrowed his causes of action to just one—trade secret misappropriation. Dkt. 59 (“FACC”).

22 Counterdefendants again moved to dismiss. This Court granted those motions in part and
 23 denied them in part. Specifically, the Court dismissed any trade secret misappropriation claims
 24 based on the allegation that Counterdefendants misappropriated the name Nextdoor.com for an
 25 online social network—the heart of Abhyanker’s claims here. *See* Dkt. 100 at 12-13 (dismissing
 26 counterclaim for trade secret misappropriation to the extent it relates to alleged misappropriation
 27 of the Nextdoor name in connection with a neighborhood-based social network). In partially

28 ³ These oppositions have been suspended pending resolution of Nextdoor’s claims in this action.

1 denying those motions, the Court did not endorse the remainder of Abhyanker's claims. Rather,
2 the Court recognized that before he could proceed, Abhyanker needed to disclose much more
3 about the scope of his alleged trade secrets, as well as how those trade secrets allegedly were
4 acquired, disclosed or used, before this claim can proceed in this action. *Id.* at 26-27. The Court
5 ordered Abhyanker to file, under seal, trade secret disclosures making these specific factual
6 allegations. *Id.*

7 **F. Abhyanker's Trade Secret Disclosures**

8 Conceding that he did not have facts to support the laundry list of trade secrets he pled in
9 his Counterclaim and FACC, but trying to keep something alive, Abhyanker publicly filed a
10 purported trade secret disclosure on August 2, 2013 limited to just three supposed secrets, and
11 which did not come anywhere close to the specificity the Court had ordered. Dkt. 105 at 2.
12 Despite multiple attempts to meet and confer regarding the insufficiency of these disclosures,
13 counsel for Abhyanker never responded. *See* Dkt. 118-1 (Declaration of Jennifer Kelly in
14 Support of Nextdoor.com Opposition to Abhyanker Motion for Leave to File the SACC) ¶ 3.
15 Counterdefendants were therefore forced to submit a unilateral case management statement
16 addressing the insufficiency of Abhyanker's trade secret disclosures. Abhyanker never addressed
17 or purported to defend the sufficiency of his disclosures in any filing made with the Court.

18 At the September 5, 2013 case management conference—which this Court had set as the
19 time to address Abhyanker's trade secret disclosures—counsel for Abhyanker again did not argue
20 that Abhyanker's disclosures were sufficient. Instead, counsel explained that Abhyanker intended
21 to serve Benchmark Capital (after having waited nearly five months to do so since filing the
22 FACC), to amend his trade secret disclosure to cover Benchmark Capital, and to file a Motion for
23 Leave to Amend his Counterclaim. The Court ordered that Abhyanker do so no later than
24 September 26, 2013. Dkt. 110.

25 **G. Abhyanker's Motion for Leave and Amended Disclosure of Trade Secrets**

26 On September 26, 2013, pursuant to this Court's order, Abhyanker filed a motion for
27 leave to amend, attaching his proposed SACC (Dkt. 115) and an Amended Trade Secret
28 Disclosure (Dkt. 116) (Amended Disclosure of Trade Secrets or "Amended TS Disclosures").

1 Far from streamlining this litigation or providing a coherent factual basis for his claims, those
2 documents only heaped on further obfuscation and ensured delay.

3 In his proposed SACC, Abhyanker purported to plead, in addition to his conclusory
4 allegations of trade secret misappropriation, new claims for copyright infringement, trademark
5 fraud, inducement to patent infringement, trademark infringement, false designation of origin, and
6 unfair competition under California Business and Professions Code § 17200. *See* SACC. And
7 while he had more than two months to prepare trade secret disclosures from the date of the
8 Court’s original order that he do so, Abhyanker’s Amended TS Disclosures still failed to offer
9 anything approaching an adequately detailed identification of secrets. Abhyanker’s Amended TS
10 Disclosures parrot the deficient identification of the same three supposed secrets he originally
11 made in August: (1) the bidding history of the Nextdoor.com domain, (2) use of the Lorelei
12 neighborhood for beta-testing an unidentified service of Abhyanker’s, and (3) “the source code
13 for the user interface” for an unidentified “private social network.” Amended TS Disclosures at
14 2. As before, these disclosures also fail to offer any facts suggesting that Abhyanker had any
15 basis to assert misappropriation of even these trade secrets—only rank conjecture.

16 In response to the baseless claims and allegations Abhyanker made in these documents—
17 and, frankly, fed up with the nonsense of Abhyanker’s tactics—Nextdoor.com sent a Rule 11
18 letter to Abhyanker’s counsel on October 4, 2013 explaining that Abhyanker needed to withdraw
19 various baseless allegations or face sanctions. Kelly Decl. ¶ 4 & Ex. 4. That letter identified each
20 of the baseless claims and allegations raised by this Motion: (1) Abhyanker’s baseless claims for
21 inducement to patent infringement, (2) Abhyanker’s false assertion that Nextdoor.com
22 misappropriated his source code, and (3) Abhyanker’s false assertion that Janakiraman was an
23 EIR at Benchmark Capital, and that Janakiraman and Tolia searched through Benchmark’s files
24 to steal Abhyanker’s trade secrets. *Id.* Ex. 4. Nextdoor.com also identified as objectively
25 baseless a claim Abhyanker had made for copyright infringement. *Id.* Abhyanker did not even
26 respond to that letter. *Id.* ¶ 4.

27 On October 10, 2013, Nextdoor.com opposed Abhyanker’s motion for leave to file the
28 SACC, further explaining the futility and baseless nature of Abhyanker’s claims. *See* Dkt. 118.

1 In reply to that opposition, Abhyanker admitted, rightly, that his copyright infringement and
 2 trademark fraud claims were without basis and dropped them from his proposed SACC. *See* Dkt.
 3 121 at 9-10. But despite Nextdoor.com's repeated explanation of the baseless nature of
 4 Abhyanker's inducement to patent infringement claim, Abhyanker stuck to it in his reply, offering
 5 purported "evidence" supposedly supporting the merits of the claim. He also attached an updated
 6 SACC reasserting the claim and the same baseless allegations that were the subject of the Rule 11
 7 letter. *See* Dkt. 121 at 10-14, Ex. A. On October 24, 2013, Nextdoor.com sought leave to file a
 8 surreply addressing this supposed "evidence" of infringement and explaining the futility of
 9 Abhyanker's inducement to patent infringement claim. *See* Dkt. 122.

10 On October 31, 2013, Nextdoor.com and Mr. Janakiraman served a copy of this motion on
 11 Abhyanker, through his counsel, in compliance with Rule 11(c)(2). Kelly Decl. ¶ 5 & Ex. 5. As
 12 of the filing of this Motion 21 days later, neither Abhyanker nor his counsel has withdrawn the
 13 claims that violate Rule 11. The allegations that are the subject of that letter and this Motion
 14 continue to be asserted.

15 ARGUMENT

16 "Filing a complaint in federal court is no trifling undertaking." *Christian v. Mattel, Inc.*,
 17 286 F.3d 1118, 1127 (9th Cir. 2006). "An attorney's signature on a complaint is tantamount to a
 18 warranty that the complaint is well grounded in fact and 'existing law' (or proposes a good faith
 19 extension of existing law) and that it is not filed for an improper purpose." *Id.* Under Rule 11,
 20 sanctions are appropriate if, measured objectively, a pleading is (1) legally unreasonable, (2)
 21 without factual foundation, or (3) brought for an improper purpose. *See, e.g., Warren v. Guelker*,
 22 29 F.3d 1386, 1388 (9th Cir. 1994); *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir.
 23 1986), *overruled on other grounds, Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 399-405
 24 (1990). Any of these three is, alone, sufficient to establish a violation warranting sanctions.
 25 *Zaldivar*, 780 F.2d at 830-32.

26 Rule 11 serves the important purpose of ensuring that a factual and legal foundation exists
 27 for assertions made in documents filed with the Court. To accomplish this, Rule 11 creates and
 28 imposes an affirmative duty to investigate the law and facts *before* filing. Fed. R. Civ. P. 11(b);

1 *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1508 (9th Cir. 1987). Imposing this duty deters
 2 plaintiffs from making wild accusations, in harmony with Rule 11's purposes in deterring
 3 "abusive pretrial tactics" and unnecessary expense. *Golden Eagle Distr. Corp. v. Burroughs*
 4 *Corp.*, 801 F.2d 1531, 1536 (9th Cir. 1986). As such, Rule 11 does not tolerate a "shoot first, ask
 5 questions later" approach to litigation. Importantly, while an improper purpose is, in and of itself,
 6 a violation of Rule 11, an absence of bad faith does *not* absolve a party or his counsel from
 7 liability for claims made without reasonable inquiry or support. *See Zaldivar*, 780 F.2d at 829
 8 (subjective good faith is no defense to Rule 11); *see also Smith v. Ricks*, 31 F.3d 1478, 1488 (9th
 9 Cir. 1994) (if a pleading or motion is filed frivolously from an objective view, it is
 10 inconsequential that it was not filed in subjective bad faith). Whether a sufficient factual basis
 11 existed at the time of the filing is assessed under an objective standard. *Zaldivar*, 780 F.2d at
 12 830-32.

13 **I. ABHYANKER HAD NO BASIS TO ALLEGE THAT NEXTDOOR.COM**
 14 **INDUCED ITS USERS TO INFRINGE HIS PATENT.**

15 As Nextdoor.com explained in its opposition to Abhyanker's motion for leave to amend
 16 his counterclaim, Abhyanker's proposed inducement to patent infringement claim requires three
 17 separate elements: (1) the existence of direct infringement of his patent; (2) facts showing that
 18 Nextdoor.com encouraged or induced its users to perform the acts that allegedly infringe
 19 Abhyanker's patent; and (3) facts showing that Nextdoor.com intentionally encouraged conduct
 20 that it knew infringes that patent. *See, e.g., Fuzzysharp Technologies Inc. v. NVIDIA Corp.*, 12-
 21 CV-06375-JST, 2013 WL 2249707, at *2 (N.D. Cal. Apr. 18, 2013); *Grobler v. Sony Computer*
 22 *Entm't Am. LLC*, 5:12-CV-01526-LHK, 2013 WL 308937, at *2 (N.D. Cal. Jan. 25, 2013); *Avocet*
 23 *Sports Tech., Inc. v. Garmin Int'l, Inc.*, C 11-04049 JW, 2012 WL 2343163, at *3 (N.D. Cal. June
 24 5, 2012); *see also* Dkt. 121 at 10 (Abhyanker's reply on motion for leave also laying out these
 25 requirements). Abhyanker's own attestations in this litigation confirm that he had no basis to
 26 claim that any of these elements were met, either when he originally filed his proposed SACC or
 27 when he later refiled it (unchanged) in support of his reply to Nextdoor.com's opposition to his
 28 motion for leave to amend.

1 The Federal Circuit has explained that Rule 11 plays an “extremely important” role in
 2 patent litigation in avoiding the significant expense and burden of baseless claims. *See View*
 3 *Eng’g, Inc. v. Robotic Vision Sys., Inc.*, 208 F.3d 981, 986 (Fed. Cir. 2000). As such, “the patent
 4 holder, if challenged, must be prepared to demonstrate to both the court and the alleged infringer
 5 exactly why it believed before filing the claim that it had a reasonable chance of proving
 6 infringement. Failure to do so *should ordinarily result* in the district court [exercising] its broad
 7 discretion in favor of Rule 11 sanctions, at least in the absence of a sound excuse or considerable
 8 mitigating circumstances.” *Id.* (emphasis added). In order to have a reasonable factual basis to
 9 allege patent infringement under Rule 11, a claimant must carefully evaluate the patent claims
 10 and the accused device. Speculation as to infringement does not constitute a reasonable inquiry.
 11 *See id.* at 985 (counterclaimant did not conduct a reasonable inquiry prior to asserting patent
 12 infringement where “the only basis for their filing was the belief of [the inventor] that the View
 13 devices probably infringed the Robotic patents [which], in turn, was based solely on his
 14 knowledge of the Robotic patents, the View’s advertising, and the statements the View made to
 15 its own customers”); *Judin v. United States*, 110 F.3d 780, 784 (Fed.Cir.1997) (mere belief that a
 16 device infringes does not constitute a reasonable pre-filing investigation). Where, as here,
 17 allegations of inducement are at issue, a claimant must also have to have a reasonable factual
 18 basis to assert the elements of specific intent to infringement and encouragement. *See F & G*
 19 *Research, Inc. v. Google Inc.*, 06-60905-CIV, 2007 WL 2774031, at *15-*16 (S.D. Fla. Sept. 21,
 20 2007) (granting Rule 11 sanctions on patent inducement claim). Abhyanker has none of this.

21 Abhyanker’s patent involves a system of geospatially constrained “bidding” on
 22 “gastronomical” items. At least three elements—an offer for customers to make *bids*, on
 23 *gastronomical* items, on a bidding platform *periodically across a spectrum of time*—are essential
 24 to every claim in the patent. *See Kelly Decl. Ex. 6* at col. 14:30-14:35, 14:45-14:49 (independent
 25 claim 1, claiming a method for determining through a central server associated with a
 26 “gastronomic bidding service provider, that a bidding platform provided by the gastronomic
 27 bidding service provider has a number of requests for gastronomic offers within at least one of a
 28 residential location zip code and a daytime location zip code associated with a user thereof” and

1 further “permitting the user to create a series of standing bid amounts spread across a spectrum of
2 time such that the standing bid amounts are submitted periodically to a set of retail establishments
3 based on at least one of a gastronomical item”).⁴ These are not complicated technical terms that
4 require any construction by this Court; they are everyday terms used by the patent with their plain
5 meaning.

6 **A. Abhyanker Had No Basis to Assert that Anyone Infringed his Patent.**

7 As to the first element of his inducement claim, the existence of a direct infringer,
8 Abhyanker’s proposed SACCs and the papers in support of his motion for leave offer no basis to
9 allege direct infringement by any Nextdoor.com customer. On its face, the proposed SACC does
10 not assert that any user of Nextdoor.com’s service has ever infringed Abhyanker’s patent.
11 Instead, Abhyanker merely asserts that Nextdoor.com users “can” create offers that Abhyanker
12 believes would infringe his patent—not that anyone has or does. *See* SACC ¶ 205. In response to
13 this explanation in opposition to his motion for leave, Abhyanker came forward with a number of
14 documents that he claims support his allegations of direct infringement. *See* Dkt. 121-1
15 (Declaration of Bruno Tarabichi in Support of Reply on Motion for Leave to Amend or
16 “Tarabichi Decl.”) Ex. A-C. But far from supporting an inference of direct infringement, those
17 documents confirm that Abhyanker did not and has never had any.

18 _____
19 ⁴ All subsequent dependent claims incorporate claim 1, either directly or indirectly. *See, e.g. id.*,
20 col. 14:61-14:64, col.15:27-15:30 (dependent claim 2, requiring all elements in claim 1, and
21 further providing that the method “permit[] a retail establishment within . . . at least one of the
22 residential location zip code and the daytime location zip code of the user to create a minimum
23 reserve price of a gastronomical item”); col. 15:31-15:50 (dependent claim 3, requiring all
24 elements in claim 2, which in turn incorporates all elements of claim 1, and further requiring the
25 generation of “a user feed that publishes the winning bid of a particular user); col. 15:56-16:4,
26 16:12-16:16, 16:17-16:18 (dependent claim 4, requiring all elements in claim 2, which
27 incorporates all elements of claim 1, and further requiring that a “threshold number of retail
28 establishments agree [with the gastronomic bidding service provider] to permit the user and other
users to receive corresponding gastronomical items . . . based on receipts generated through at
least one central server upon securitization of at least one . . . winning bid” and “appending a
delivery charge to . . . the winning bid[s]”); col. 16:28-16:32 (dependent claim 5, requiring all
elements in claim 1 and further calling for the “marketing, to a plurality of users, the set of
gastronomical items through the bidding platform provided by the gastronomic bidding service
provider”); col. 16:33-16:59 (dependent claim 6, requiring all elements of claim 1, and further
requiring that a central server process a “conditional purchase offer having an offer price of the
user . . . for a gastronomical item associated with a plurality of retail establishments”); *see also* 35
U.S.C. § 112 (“A claim in dependent form shall be construed to incorporate by reference all the
limitations of the claim to which it refers”).

Indeed, none of Exhibits A through C show direct infringement of the patent's gastronomic bidding system. Exhibit A describes how "[s]ome restaurants in Potrero Hill . . . offer specials one night a week just for local Nextdoor.com members." *Id.* Ex. A at 2. But offering a special is not soliciting a bid for food, that might be accepted or rejected, through a system that creates a series of standing bid amounts over time—which is what Abhyanker's patent requires. Exhibit B describes how a neighbor hopes to, in the future, advertise his guitar lessons and solicit discounts from sellers of lawn care for a group of neighbors. *Id.* Ex. B at 3-4. Again, there is no offer from a seller to accept bids on anything, much less food. And Exhibit C merely explains that a user "posted a brief notice on the Village Shores Estates page a few months ago when he started his private contracting business." *Id.* Ex. C at 2. None of this has anything to do with bidding or gastronomy or suggests that anyone has ever thought of, much less practiced Abhyanker's invention: offering persons geospatially constrained opportunities to bid a series of prices for food items. Thus, Abhyanker had no basis to assert that any Nextdoor.com user infringed his asserted patent, much less an objectively reasonable one. As such, for this reason alone, sanctions on this claim are appropriate.

B. Abhyanker Had No Basis to Assert that Nextdoor.com Encouraged Anyone to Practice Abhyanker's Patent.

The second element of Abhyanker's inducement claim is that Nextdoor.com actively encouraged its users to engage in conduct that Abhyanker alleges infringed his patent. Again, Abhyanker's SACC is completely devoid of any facts supporting such an assertion. Instead, Abhyanker's proposed SACC merely contains the wholly unsupported conclusion, made on information and belief, that Nextdoor.com "encouraged, instructed, enabled and otherwise caused its customers to use its products and service for presenting gastronomic offers to users who reside within a particular zip code." *See* SACC ¶ 207.⁵

⁵ Violations of Rule 11 also include making unfounded allegations supposedly "on information and belief." The comments to the 1993 amendments to Rule 11 explain that "[t]olerance of factual contentions in initial pleadings by plaintiffs or defendants when specifically identified as made on *information and belief does not relieve litigants from the obligation to conduct an appropriate investigation* into the facts that is reasonable under the circumstances; *it is not a license to join parties*, make claims, or present defenses without any factual basis or justification." *See* 1993 Advisory Committee Notes to Fed. R. Civ. P. 11. (emphasis added).

1 In response to Nextdoor's and Janakiraman's opposition to Abhyanker's motion for leave,
 2 all that Abhyanker points to as supporting this assertion is a publicly available presentation by
 3 Nextdoor.com, which explains that Nextdoor.com's "business model will focus on working with
 4 local businesses to provide special offers to neighbors." Tarabichi Decl. Ex. D at 10. On its face,
 5 this has nothing to do with offers to *bid* on any product, much less bidding on *gastronomical*
 6 *items*. At most, it shows that Nextdoor.com has plans for businesses to use its service for future
 7 advertising. This is not the purported invention claimed by Abhyanker's patent—not even close.
 8 As such, this document does not and could not have provided Abhyanker with any objective basis
 9 to allege that Nextdoor.com encouraged acts that infringe his patent. This is precisely the type of
 10 situation in which sanctions are appropriate. *See F & G Research*, 2007 WL 2774031, at *16
 11 (general purpose documentation on the use of the defendants products which could benefit
 12 infringers and non-infringers alike is not sufficient to establish a Rule 11 basis for alleging
 13 inducement). Again, on its own, this failure is sufficient to warrant sanctions.

14 **C. Abhyanker Had No Basis to Allege that Nextdoor.com Had a Specific Intent**
 15 **to Induce Infringement of his Patent When he Filed his SACC.**

16 Finally, Abhyanker's own statements confirm that he had no basis to assert that
 17 Nextdoor.com met the final element of this claim when he filed his SACC: specific intent to
 18 induce infringement. *See* SACC ¶ 207. Abhyanker does not allege anywhere in his SACC that
 19 he provided Nextdoor.com notice of his patent prior to filing the SACC. He did not. Instead, in
 20 response to Nextdoor.com's opposition to his motion for leave, Abhyanker suggested that in
 21 settlement negotiations Nextdoor.com became aware that Abhyanker claimed to own *some* patent
 22 interest. Tarabichi Decl. ¶ 5. This is not sufficient.

23 Absent actual notice of the *specific* patent Abhyanker asserted before filing the SACC,
 24 Nextdoor.com could not have the specific intent required for inducement. *See Proxycorr, Inc. v.*
 25 *Microsoft Corp.*, No. 11-cv-1681-DOC (ANx), 2012 WL 1835680, at *5, *7 (C.D. Cal. May 16,
 26 2012) (first notice of patent at issue must precede filing); *Ip Venture, Inc. v. ASUS Computer*
 27 *Int'l, et al.*, No. C 12-04143 JSW, Dkt. 159 at 5 (N.D. Cal. Jan. 29, 2013) (same). Indeed, as a
 28 self-proclaimed "patent attorney," Abhyanker certainly is aware of this requirement. Kelly Decl.,

1 Ex. 3. That he nonetheless alleges that Nextdoor.com possessed such specific intent, despite
 2 knowing that he never put Nextdoor.com on notice of his patent, confirms his lack of basis for his
 3 allegation in this regard. *See F & G Research*, 2007 WL 2774031, at *15 (considering lack of
 4 prefiling notice of patent in finding a plaintiff lacked a sufficient Rule 11 basis to assert an
 5 inducement claim). For this reason too, sanctions are warranted on this claim.

6 **II. ABHYANKER HAD NO BASIS FOR HIS ALLEGATIONS OF TRADE SECRET**
 7 **MISAPPROPRIATION OF SOURCE CODE.**

8 Abhyanker likewise had no reasonable basis to assert that Nextdoor.com misappropriated
 9 “his” “user interface source code.” Abhyanker asserts that Nextdoor.com must have been
 10 provided the source code for its user interface from either Counterdefendant Sandeep Sood or
 11 Benchmark because the interface generated by Abhyanker’s code purportedly has “strikingly
 12 similarities” to that used by Nextdoor.com. *See* Amended TS Disclosures at 5. In fact, there is
 13 minimal similarity in the appearance of the user interfaces, nor would any resemblance require, or
 14 indicate, that source code was duplicated. But more importantly, as shown below, the only user
 15 interface to which Abhyanker arguable has rights in source code—that created for LegalForce
 16 (which Abhyanker claims to have acquired when that company folded)— **has no similarity**
 17 **whatsoever to Nextdoor.com’s interface.** While Abhyanker’s allegations in his Amended Trade
 18 Secret Disclosures are carefully crafted to obfuscate what source code he is referring to, at
 19 bottom, there is absolutely no basis for his source code misappropriation claim.

20 Abhyanker has asserted two inconsistent theories of *how* Nextdoor might have come into
 21 possession of source code: either Nextdoor.com got his secrets from Benchmark Capital when its
 22 co-founder Nirav Tolia was briefly an EIR there in 2007 (after Benchmark had already rejected
 23 Abhyanker’s funding proposal for Fatdoor, and years before Nextdoor.com’s business was
 24 conceived), or Nextdoor.com received code from Sandeep Sood years later, in 2010. *See Id.* at 4-
 25 5. Abhyanker alleges that Benchmark was provided a copy of certain code on a Diligence CD-
 26 ROM in June of 2007, but despite requests by Nextdoor.com’s counsel, Abhyanker has not
 27 provided a copy so that any materials thereon can be reviewed. As to Sood, Abhyanker claims
 28

1 that he did not ever receive a copy of whatever code Sood created—making his assertion that
2 Nextdoor somehow must have used such code particularly baseless.

3 As to *what* source code Nextdoor purportedly received, Abhyanker first pled in his
4 amended counterclaim that Nextdoor.com and Janakiraman misappropriated dozens of vaguely
5 identified trade secrets, including “software code.” *See* Dkt. 16 ¶ 108; FACC ¶ 109.⁶ When
6 forced to provide more specificity, Abhyanker vaguely alleged in his Amended Trade Secret
7 Disclosures that they misappropriated “the source code for the user interface of his [Abhyanker’s]
8 online private social network.” Amended TS Disclosures at 2:16-2:17. Despite Nextdoor.com’s
9 request to clarify, this allegation remained opaque as to which of Abhyanker’s alleged services,
10 LegalForce or Fatdoor, this purported code was for. The allegations in the SACC, however, make
11 clear that the alleged “theft” had to be the LegalForce source code. Abhyanker alleges in his
12 Amended Trade Secret Disclosure that he “hired Counterdefendants Sandeep Sood and Monsoon
13 Enterprises to create the source code that constitutes Mr. Abhyanker’s trade secret.” *Id.* at 3. In
14 turn, the SACC alleges that the *only* code Sood developed for Abhyanker was for LegalForce.
15 *See* SACC ¶ 115.⁷ Abhyanker alleged that there was code for the *Fatdoor* service, but that it was
16 not only distinct, but developed by a different person, Chandu Thota. *Id.* Thus, however he
17 might attempt to fudge the issue, the only way his claim of misappropriation can hold together is
18 if the source code allegedly stolen was that Sood wrote for LegalForce, not the code Thota wrote
19 for Fatdoor. This is doubly true because Abhyanker, as discussed above, Abhyanker did not own
20 the Fatdoor assets; Fatdoor, Inc. and its corporate successors did.

21 Abhyanker has pleaded no factual basis to believe that Nextdoor ever obtained the
22 Sood/LegalForce source codes. Indeed, the facts countermand that proposition. The only “fact”
23 Abhyanker offers in support of his allegation of source code misappropriation in his Amended
24 Trade Secret Disclosures is the supposed “striking similarities” between the interface for “his”
25 unnamed private social network and the user interface used by Nextdoor.com. Amended TS
26 Disclosures at 6. Abhyanker’s proposed SACC reveals that the purported similarities to which he

27 ⁶ Abhyanker repeats this allegation in his proposed SACC. *See* SACC ¶ 100.

28 ⁷ Abhyanker alleges he planned to use this same code for his Nextdoor concept, which he
concedes he never launched. SACC ¶ 99.

1 vaguely refers here are to *Fatdoor*, not *LegalForce*. In his proposed SACC, Abhyanker discusses
 2 the supposed striking similarities between Nextdoor.com’s user interface and that for
 3 Abhyanker’s Fatdoor service. See SACC ¶¶ 198-200. The SACC even alleged that
 4 Nextdoor.com engaged in copyright infringement by copying the Fatdoor interface, and presented
 5 copies of the Fatdoor interface side by side with the Nextdoor.com interface.⁸ Abhyanker does
 6 not, and cannot make any such allegations of similarity between the Nextdoor code and the
 7 *LegalForce* service—which in fact looked nothing like Nextdoor.com’s interface. Compare
 8 Kelly Decl. Exs. 1-2 (archived version of the LegalForce website) to Ex. 7 (Nextdoor.com’s
 9 website).⁹

10 Abhyanker’s suggestion that Nextdoor.com’s user interface is (purportedly) similar to
 11 *Fatdoor*’s interface (which Abhyanker did not own) provides no basis to claim that Nextdoor.com
 12 misappropriated the separate code base from LegalForce, which looks nothing like the
 13 Nextdoor.com site. What makes this baseless claim especially sanctionable is Abhyanker’s
 14 attempt to conceal its fundamental deficiency in vague phrasing calculated to mask the truth.

15 There is, in short, absolutely no basis whatsoever for the spurious assertion that
 16 Nextdoor.com obtained or used a shred of LegalForce source code. Where a party makes
 17 allegations of only what is possible without any facts to conclude it is actually true, they violate
 18 Rule 11. See, e.g., *Kinderstart.com LLC v. Google, Inc.*, C06-2057JFRS, 2007 WL 831811 (N.D.
 19 Cal. Mar. 16, 2007) (vague, second-hand allegations that were merely consistent with Google
 20 modifying searching list rankings insufficient). Beyond wild speculation—which would be
 21 insufficient to meet the standards of Rule 11—misappropriation of LegalForce interface source
 22 code is disproven by the very dissimilarity of the user interfaces on their face. See, e.g., *Mendez-*
 23 *Aponte v. Bonilla*, 645 F.3d 60, 68 (1st Cir. 2011) (affirming grant of Rule 11 sanctions where
 24 factual allegations were based on only “speculation and conclusory allegations”).

25 ⁸ Abhyanker ultimately withdrew his copyright claim, in the face of Nextdoor.com’s Rule 11
 26 Letter, which explained how there was no copyrightable expression copied, and that Abhyanker
 did not own the Fatdoor.com IP in any event.

27 ⁹ Even if the interfaces at issue were similar in appearance, this would not be indicative of
 28 misappropriation of the source code for those interfaces. Two services could have identical
 appearances without sharing a single relevant line of code.

1 It is all the more difficult to fathom how Abhyanker could, in good faith, purport to allege
 2 misappropriation of source code that he expressly alleges he never even received and thus could
 3 not know the contents. *See* Amended TS Disclosures at 3 (“Although Mr. Abhyanker is the legal
 4 owner of the source code per his contractual agreement with CounterDefendants,
 5 CounterDefendants failed to provide him with a copy of the source code”). Abhyanker had no
 6 basis to assert misappropriation of his source code, and he should be sanctioned for seeking to
 7 prolong this case by doing so.

8 **III. ABHYANKER HAD NO BASIS TO ALLEGE THAT JANAKIRAMAN AND**
 9 **TOLIA ACCESSED HIS SUPPOSED TRADE SECRETS.**

10 Finally, Abhyanker makes a number of wild and reckless allegations in support of his
 11 theory that Nextdoor.com co-founders Janakiraman and Tolia accessed—and misappropriated—
 12 his trade secrets from Benchmark.

13 Abhyanker alleges in his Amended Trade Secret Disclosures that Janakiraman and Tolia
 14 “operated their Nextdoor.com business and were employed inside the offices of Benchmark and
 15 had full access to, and accessed analyst notes, diligence materials, and the Diligence CD-ROM”
 16 containing Abhyanker’s trade secrets. *Id.* at 5. The SACC further alleges that both Janakiraman
 17 and Tolia were EIRs at Benchmark Capital (SACC ¶ 135) and that, in this capacity, they
 18 “researched the history of Abhyanker’s Trade Secrets by looking through electronic archives
 19 stored at Benchmark Capital.” SACC ¶ 145.¹⁰ These allegations are the sole basis for
 20 Abhyanker’s theory that Nextdoor.com must have misappropriated Abhyanker’s trade secrets
 21 while Tolia and Janakiraman were EIRs and Benchmark. They are totally without factual basis.

22 As an initial matter, Janakiraman was never an EIR at Benchmark, as Abhyanker has been
 23 informed on numerous occasions. *See* Dkt. 38 at 15 n.9; Dkt. 63 at 17 n.8. There was and is no
 24 basis for Abhyanker to continue to allege otherwise. And he could easily have confirmed Mr.
 25 Janakiraman’s employment history by looking at his publicly available LinkedIn profile. *See*

26
 27
 28 ¹⁰ As explained above, that this latter allegation is made on information and belief does not
 immunize Abhyanker from his Rule 11 obligations.

1 Kelly Decl. Ex. 8 (Janakiraman LinkedIn page not noting any employment at Benchmark). The
2 Janakiraman allegations thus have no good faith factual basis.

3 While Tolia was for a short time an EIR at Benchmark, he did not become one until two
4 months *after* Abhyanker unsuccessfully sought funding for Fatdoor in June, 2007. *See* Kelly
5 Decl. Ex. 9 (Tolia LinkedIn page showing that he joined Benchmark in August 2007); SACC ¶
6 121 (alleging that Abhyanker sought funding for Fatdoor from Benchmark in June 2007). These
7 are publicly available documents that any reasonable investigation by Abhyanker or his counsel
8 would and should have turned up. Abhyanker has no basis to allege that Tolia was an EIR at
9 Benchmark during the time he pitched Fatdoor.

10 Moreover, Abhyanker has himself acknowledged that when the Company was founded in
11 December 2007, after Tolia had left Benchmark, it had a different name (SPN and then Fanbase)
12 and pursued a totally different business model—an online almanac of professional and college
13 athletes. *See* SACC ¶ 99. There is not a shred of evidence or factual basis to suggest that
14 Janakiraman and Tolia began pursuing a business in the neighborhood social networking space
15 prior to the Spring of 2010, years later. *Id.*

16 The bare fact that Tolia was an EIR at Benchmark for several months that did not coincide
17 with Abhyanker's pitch of Fatdoor cannot support any inference that Tolia and Janakiraman had
18 access to, much less rifled through Benchmark's "electronic archives" in search of, trade secrets
19 related Abhyanker's failed business. The fact that Janakiraman and Tolia never entered the
20 neighborhood social network space until three years *after* Tolia left Benchmark renders this
21 allegation as nonsensical as it is reckless. Abhyanker should be sanctioned for it. A creative
22 allegation of conduct that the plaintiff imagines could be possible, without any foundation in fact
23 for the accusation, is impermissible under Rule 11.

24 **IV. ABHYANKER'S BASELESS ALLEGATIONS IN THIS ACTION WERE MADE**
25 **FOR AN IMPROPER PURPOSE.**

26 Beyond the lack of any objective basis for these allegations, the history of Abhyanker's
27 litigation campaign strongly supports an inference that Abhyanker made these allegations that for
28 an improper purpose. This is an independent basis on which this Court should find a violation if

1 Rule 11. *Zaldivar*, 780 F.2d at 830-32. Under Rule 11, an “improper purpose” is a purpose to
 2 “harass or to cause unnecessary delay or needless increase in the cost of litigation.” Fed. R. Civ.
 3 P. 11(b)(1). The test for finding an improper purpose, like factual or legal frivolity, is an objective
 4 one. *G.C. and K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003). Such a finding is
 5 warranted here.

6 Abhyanker has spent the better part of two years dragging Nextdoor.com, its founders,
 7 investors, and their friends through baseless and harassing litigation. He has resisted and
 8 attempted to dodge every attempt by Nextdoor.com to pin down his meritless claims so they may
 9 be dispensed with. When Nextdoor.com and Benchmark demurred in the State Court Action, he
 10 abruptly dismissed and filed an action in the TTAB. When Nextdoor.com filed this action to
 11 vindicate rights that could not be adjudicated in the TTAB, Abhyanker answered with a
 12 Counterclaim that directly contradicted his previous allegations in the State Court Action. In the
 13 face of motions to dismiss in this Court, Abhyanker filed an FACC that did little to address the
 14 concerns raised by Counterdefendants’ previous motions—only delaying a determination on the
 15 merits. Now that the Court has rejected the heart of his counterclaim—that Nextdoor.com
 16 misappropriated the name Nextdoor which he never acquired or used—Abhyanker has provided
 17 baseless trade secret designations in the hopes of keeping this case alive. Most recently, he has
 18 proposed to drag out matters even longer with a frivolous (but expensive) patent infringement
 19 claim targeting Nextdoor.com and its users, as discussed above.

20 This is precisely the type of behavior that Rule 11 is meant to punish and deter. *See, e.g.,*
 21 *Stewart v. American Intern. Oil & Gas Co.*, 845 F.2d 196, 201 (9th Cir. 1988) (affirming
 22 sanctions imposed for filing groundless third-party complaint for improper purpose of delaying
 23 and multiplying proceedings); *Kendrick v. Zanides*, 609 F. Supp. 1162, 1173 (N.D. Cal. 1985)
 24 (the “only reasonable conclusion is that Kendrick and his attorneys filed the amended complaint,
 25 and the subsequent declarations, not to prevail in the action, which they knew they could not, but
 26 to serve their vindictive purpose to damage the defendants’ reputations and subject them to
 27 personal harassment. Sanctions must therefore be imposed”). Given that Abhyanker had no
 28 reasonable basis for any of his allegations, and has resisted every attempt to provide any

1 explanation for them, this Court can and should conclude that his allegations here were made for
 2 an improper purpose. Abhyanker should be sanctioned for this reason as well.

3 **V. ABHYANKER AND HIS COUNSEL SHOULD BE SANCTIONED AND**
 4 **NEXTDOOR.COM AWARDED ITS ATTORNEYS' FEES.**

5 The final question this Court must confront is the nature of the sanction appropriate for
 6 these violations and against whom it should be imposed. Rule 11 provides that the Court may
 7 impose “an appropriate sanction on any attorney, law firm, or party that violated the rule or is
 8 responsible for the violation.” Fed. R. Civ. P. 11(c)(1). “Absent exceptional circumstances, a
 9 law firm must be held jointly responsible for a violation committed by its partner, associate, or
 10 employee.” *Id.* The sanction itself should be sufficient “to deter repetition of the conduct or
 11 comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4). Payment to the
 12 opposing party of “reasonable attorneys’ fees and other expenses directly resulting from the
 13 violation” are generally appropriate as well. *Id.*; *see also Young v. Polo Retail, LLC*, C 02 4546
 14 VRW, 2007 WL 951821, at *8-*9 (N.D. Cal. Mar. 28, 2007) (granting award of attorneys’ fees
 15 for responding to frivolous motion to dismiss); *Kendrick*, 609 F. Supp. at 1173 (awarding
 16 attorneys fees for defending the entire action for violation of Rule 11). Where an attorney and his
 17 client share responsibility for the violation, they should both be held jointly and severally
 18 responsible for it. *See Kendrick*, 609 F. Supp. at 1173 (where “[n]othing in the record indicates
 19 that as between the client and counsel, one should be regarded as less blameworthy than the
 20 other,” the court imposed sanctions jointly and severally between the lawyer and client).

21 Abhyanker and his attorney were provided more than ample opportunity to retract the
 22 frivolous allegations made in both the proposed SACCs and the Amended Trade Secret
 23 Disclosures. In addition to the 21-day safe harbor provided by the service of this Motion,
 24 Nextdoor.com and Janakiraman also provided Abhyanker and his counsel nearly a month to
 25 investigate their allegations with their Rule 11 letter. *See Kelly Decl. Ex. 4.* Neither Abhyanker
 26 or his counsel made any efforts to correct the violations at issue here. Nextdoor.com,
 27 Janakiraman, and this Court consequently have been forced to spend a significant amount of time
 28 addressing these frivolous claims and allegations. At minimum, Abhyanker should be forced to

1 pay Nextdoor.com and Abhyanker their reasonable attorneys' fees for defending against these
2 allegations and to pay some sanction into the Court that it deems reasonable. At least this is
3 required to deter Abhyanker and his counsel and reimburse Nextdoor.com, Janakiraman, and this
4 Court for their time and expenses.¹¹

5 If ever there were a case in which responsibility for the sanctions should be shared jointly
6 and severally by the lawyer and the client, this is it. The record reveals that it is Abhyanker who
7 is driving this case. In addition to the fact that it is his law firm, and thus, his employees, who are
8 representing him in this case, it was Abhyanker, not his counsel, who drafted the Amended Trade
9 Secret Disclosures challenged by this Motion. When counsel for Nextdoor.com tried to meet and
10 confer with Abhyanker's counsel regarding the sufficiency of his original Trade Secret
11 Designation (Dkt. 82), his counsel (Mr. Tarabichi) admitted he was unable to discuss their
12 substance or how they would be amended because his client, not him, was drafting them. *See*
13 Kelly Decl. ¶ 10. Abhyanker should be appropriately sanctioned for his actions.

14 CONCLUSION

15 Because Abhyanker and his counsel have made frivolous and improper allegations in this
16 matter, and because they refused to retract or otherwise correct those allegations in response to
17 either Nextdoor.com and Janakiraman's Rule 11 letter or Motion, Abhyanker and his counsel
18 should be sanctioned for violation of Rule 11 in the manner requested herein.

19 Dated: November 21, 2013

FENWICK & WEST LLP

21 By: /s/ Jennifer L. Kelly
22 Jennifer L. Kelly

23 Attorneys for Plaintiff and Counterdefendant
24 NEXTDOOR.COM, INC. and Counterdefendant
25 PRAKASH JANAKIRAMAN
26

27 ¹¹ Nextdoor.com and Janakiraman propose that, should the Court grant this Motion, they be
28 ordered to submit materials substantiating their attorneys fees incurred in responding to these
allegations.